

**NOV 22 2005****NOT FOR PUBLICATION****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****JOSE REYES RAMOS-RUIZ,****Defendant - Appellant.****No. 04-10130****D.C. No. CR-03-170-HDM****MEMORANDUM\*****On Remand from the United States Supreme Court****Before: LEAVY, McKEOWN, and BERZON, Circuit Judges**

On December 3, 2004, we filed a memorandum disposition affirming José Reyes Ramos-Ruiz's sentence. On April 18, 2005, the Supreme Court granted Ramos-Ruiz's petition for a writ of certiorari, vacated our judgment, and remanded for further consideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). The record does not show how the district court would have proceeded had it known that the Sentencing Guidelines were advisory rather than mandatory.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Accordingly, we remand for the district court to answer the question whether the sentence would have been materially different if it had known that the Guidelines were advisory, and for further proceedings under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc).

**REMANDED.**